

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

2 -----x
3 ALLSTATE INSURANCE COMPANY, et al.,

4 Plaintiffs,

5 versus

08 CV 4405 (PKC)

6 MARK MIRVIS, et al.,

7 U.S. Courthouse
8 Brooklyn, New York

Defendants.

-----x
9 December 2, 2019
10 12:00 p.m.

11 Transcript of Civil Cause for Order to Show Cause

12 Before: HONORABLE PAMELA K. CHEN,
13 District Court Judge

14 APPEARANCES

15 Attorney for Plaintiff:

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New York, New York 10281
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19 BY: ROBERT A. STERN, ESQ.
ANDREW MIDGETT, ESQ.

20 Pro Se Defendant:

21 MARK MIRVIS

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25 produced by computer-aided transcription.

MICHELE NARDONE, CSR -- Official Court Reporter

Allstate, et al. v. Mirvis, et al.

1 (In open court.)

2 THE CLERK: All rise.

3 THE COURT: Have a seat, everyone.

4 THE CLERK: Civil cause for order to show cause,

5 Docket 08 CV 4405, Allstate Insurance Company, et al. versus
6 Mirvis, et al.

7 Will the parties please state their appearances for
8 the record, starting with plaintiff.

9 MR. NATBONY: Good morning, Your Honor. William
10 Natbony, from Cadwalader, Wickersham & Taft, on behalf of the
11 plaintiff.

12 THE COURT: Good morning -- good afternoon, actually.

13 MR. STERN: Good afternoon, Your Honor. Robert Stern,
14 from Morrison Mahoney, on behalf of Allstate.

15 MR. MIDGETT: Good afternoon, Your Honor. Andrew
16 Midgett, with Morrison Mahoney, for all plaintiffs.

17 THE COURT: Good afternoon.

18 MR. MIRVIS: Good afternoon, Your Honor. My name is
19 Mark Mirvis.

20 THE COURT: Good afternoon to you, Mr. Mirvis.

21 So we are here based on the report and recommendation
22 of Magistrate Judge Kuo, who has also certified facts in
23 connection with the motion for civil contempt filed by
24 Plaintiff Allstate Insurance.

25 She recommended, and I followed that recommendation,

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1 to schedule this show cause hearing, the purpose of which,
2 Mr. Mirvis, is for you to explain to me why it is that you
3 should not be found in contempt for having failed, on multiple
4 occasions, to comply with requests to provide, or subpoenas
5 actually, to provide financial information in connection with
6 this case; and then also, a September 2017 order issued by
7 Judge Kuo granting the motion to compel you to produce those
8 documents.

9 You understand why we are here, Mr. Mirvis; is that
10 right.

11 MR. MIRVIS: Yeah.

12 THE COURT: Now, let me address first your request
13 filed last week for a Russian translator. I want to make sure
14 you understand that in civil proceedings, such as this, parties
15 are not entitled to have the court provide them with
16 interpretation services. If this were a criminal matter
17 brought by U.S. Attorney's Office, then the situation would be
18 entirely different.

19 But this is a civil matter. It's one in which, I
20 believe, you actually have participated without the assistance
21 of a translator thus far. So beyond the fact that the court is
22 not required to provide you an interpreter, it does not appear
23 to me that one is necessary. You have been able to
24 successfully participate in the process, both in writing and in
25 person, without the assistance of translation, at least for the

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1 in-person appearances.

2 So I'm going to deny that request for the reasons that
3 I just stated.

4 You understand what it is that Judge Kuo is
5 recommending, correct, Mr. Mirvis?

6 MR. MIRVIS: Yes.

7 THE COURT: Okay. She is saying that I should find
8 you in contempt because you have failed to make any efforts to
9 comply with the subpoenas that have been issued and
10 longstanding in this case. Do you understand that?

11 MR. MIRVIS: I understand.

12 THE COURT: Okay. Why should I not find you in
13 contempt?

14 MR. MIRVIS: I got totally lost, and basically I got a
15 lot of papers, and basically some of the papers was coming. I
16 mean, I know it was to my attorney Oleh Dekajlo --

17 THE COURT: Hold on. Attorney? Spell the name.

18 MR. MIRVIS: Oleh.

19 THE COURT: O-L-E-H?

20 MR. MIRVIS: Dekajlo, D-E-K-A-J-L-O.

21 THE COURT: That was a person who represented you
22 between May 2016 and then through July 2018, correct?

23 MR. MIRVIS: Basically, he not represent me. This is,
24 I find out only in 2017, because basically I was consulting
25 with him like before, and he was doing some certain things for

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1 me, certain lawyer's things; but I never was knew he represent
2 me in this case.

3 THE COURT: You didn't know he represented you?

4 MR. MIRVIS: No.

5 THE COURT: You appeared in court with him.

6 MR. MIRVIS: I appeared in court because he called me
7 and said I need to come to the court with him and to --

8 THE COURT: Hang on. Are you claiming you never
9 signed a retainer agreement with him?

10 MR. MIRVIS: I never signed a retainer.

11 THE COURT: You never met with him?

12 MR. MIRVIS: No, no. I met him, and I was coming to
13 consultation even when this case started in 2008, 2009.

14 THE COURT: Did you pay him in connection?

15 MR. MIRVIS: I paid him some for consultation, but I
16 never got idea he is my lawyer in this case, because basically
17 my case was over because of -- how do you call -- I never
18 answer to the court, right? Being all my part was never --
19 see, my English is not so good here.

20 THE COURT: Your English seems fine to me, sir.

21 Let me put aside I do not credit your representation
22 that you did not know that Mr. Dekajlo represented you
23 because --

24 MR. MIRVIS: At that time, yes.

25 THE COURT: It's for two years, sir.

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1 MR. MIRVIS: Yes.

2 THE COURT: And you appeared in front of Judge Kuo.

3 MR. MIRVIS: Yes.

4 THE COURT: At a court appearance he undoubtedly said,
5 I am here representing Mr. Mirvis. So unless you did not hear
6 anything that went on.

7 MR. MIRVIS: No. This is the date I find out he is
8 represent me, when it came to Judge Kuo, when I was here in the
9 court, and this is way I find out he is my attorney.

10 THE COURT: Let's put aside that issue.

11 It sounds like what you are saying is the reason you
12 have not complied for -- we are going on over four years now --
13 with the subpoenas that were filed against you and other
14 defendants, simply to produce your financial records, is that
15 you were confused and that there was a lot of paper; and
16 somehow now you are saying you did not know you had to produce
17 these financial records for these last four years?

18 MR. MIRVIS: I have now my financial records is here.
19 I fill out all papers. I spoke a couple of weeks ago, right,
20 with you guys and you send me the papers. So I filled out all
21 the papers.

22 THE COURT: You are pointing to plaintiffs' counsel.

23 MR. MIRVIS: Yes.

24 THE COURT: Who did you speak with?

25 MR. MIRVIS: I speak with Andrew, I believe, right, by

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1 phone.

2 MR. MIDGETT: Yes, Your Honor.

3 MR. NATBONY: I was on the phone as well.

4 THE COURT: Hold on. One at a time. So Mr. Midgett
5 and Mr. Nat --

6 MR. NATBONY: Natbony.

7 THE COURT: Natbony, sorry. You had a conversation
8 with Mr. Mirvis?

9 MR. NATBONY: Your Honor, Mr. Mirvis left a message
10 for Mr. Midgett and asked for a copy of the information
11 subpoenaed. We responded expeditiously, called him -- he just
12 left a message for us. We called him back, together; and he
13 asked for a copy of the information subpoena, which we provided
14 him. That was the full extent of the conversation.

15 There was no representation that he was providing us
16 with anything or anything, and that took place approximately --

17 MR. MIDGETT: Approximately November 12, Your Honor.

18 THE COURT: Okay. So you are claiming, Mr. Mirvis,
19 that now you are going to produce the documents.

20 MR. MIRVIS: I produce everything here. I got
21 everything here.

22 THE COURT: That thin envelope there?

23 MR. MIRVIS: Yes.

24 THE COURT: All right. Do me a favor. Do hand that
25 over to plaintiffs' counsel.

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1 Is that a copy?

2 MR. MIRVIS: It's -- I have a copy.

3 THE COURT: So you are not giving away any originals?

4 MR. MIRVIS: Yeah, I have a copy. It's original, but
5 I have a copy in my records here.

6 THE COURT: Let me just say this. This does not moot
7 the request, though, of the plaintiffs' attorneys to get, at a
8 minimum, attorneys' fees as a sanction for your failing to have
9 complied for the last four years, certainly as of
10 September 2017, when Judge Kuo specifically compelled you to
11 provide the documents you are only providing today.

12 You understand that?

13 MR. MIRVIS: I understand.

14 THE COURT: Okay. So, so far you have not told me
15 anything that makes me think you were not aware that at least
16 as of September 2017 you were required to respond to the
17 subpoenas. Is that correct?

18 MR. MIRVIS: Yes.

19 THE COURT: And you received copies of these subpoenas
20 prior to your phone call with the attorneys?

21 MR. MIRVIS: I received, yeah, time ago, Your Honor.
22 I mean, not recently but a time ago.

23 THE COURT: Why didn't you produce anything until
24 today?

25 MR. MIRVIS: It was totally mixed up with me. I mean,

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1 I have no attorney and I was totally mixed up with papers, and
2 basically I'm not so good with the paperwork also.

3 THE COURT: The record -- sir, sir, wait.

4 MR. MIRVIS: I'm sorry.

5 THE COURT: Stop for one second. The record is clear
6 that you had an attorney for at least two years, between
7 May 2016 and July 2018. I obviously could not speak to what
8 your conversations were with Mr. Dekajlo, but it is abundantly
9 clear to me that he represented you during that period of time.

10 I do not, as I said before, believe for a moment that
11 you did not know that there was a motion to compel pending
12 during that time, to get you to comply with the subpoenas that
13 had been outstanding since April 2015 and which Judge Kuo makes
14 clear in the certified facts she provided that you were aware
15 of all this time.

16 So the bottom line is I do find that you have been in
17 contempt and may still be in contempt, because I think the
18 plaintiffs' counsel need to review the records that have been
19 so belatedly filed, only when your arm has been twisted in this
20 manner, to see if it actually does comply. I have no doubt
21 that there will be some follow-up requests, but that will start
22 the process anew.

23 Don't misunderstand for a moment, Mr. Mirvis, that you
24 are out -- that you are in the clear at this time. I am going
25 to award attorneys' fees, based on the plaintiffs' -- plaintiff

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1 having to file the motion. At last count that amount was
2 \$9,942. I'm assuming that there might be a slight uptick
3 because of today's appearance.

4 Mr. Natbony, let me know.

5 MR. NATBONY: Yes, Your Honor. Just to let Your Honor
6 know, we also made the affirmative decision to be equitable and
7 not charge for any of my time for any of these issues, even
8 though I have been intimately involved.

9 THE COURT: All right. So what I will do is I'm going
10 to award the \$9,942 as the attorneys' fees. You should pay
11 that, Mr. Mirvis, within the next 14 days. It's payable
12 directly to -- should we make it to you, Mr. Natbony -- or
13 probably not, I guess.

14 MR. NATBONY: To Morrison Mahoney is fine.

15 THE COURT: Okay. So if you have any issues about
16 where to send it or in what form, speak to the attorneys
17 afterwards.

18 So 14 days from today is?

19 THE CLERK: It is December 16.

20 THE COURT: Okay. Now, the plaintiffs' attorneys, as
21 I mentioned before, will no doubt be reviewing the documents
22 you provided today. If there are follow-up requests, those
23 should be made and served upon Mr. Mirvis via subpoena, as
24 before; and then we will see where that process goes.

25 However, Mr. Mirvis, I want you to know that we are

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1 going to -- or I'm going to follow a much more expedited
2 process because this record makes clear to me that there has
3 been a sustained pattern of noncompliance. That I'm not going
4 to tolerate, and I will advise and consult with Judge Kuo
5 regarding this and how we can move it along faster, which might
6 simply include making her process a little shorter.

7 If she finds there is noncompliance, she can
8 immediately make a recommendation to me for a finding of
9 contempt. We need to move this along.

10 So, Mr. Mirvis, if there are more documents that you
11 ought to provide and that you know you should provide in the
12 interests of full disclosure, I suggest you do so.

13 I also urge the plaintiffs' counsel to communicate
14 directly with Mr. Mirvis, if you find that there are more
15 documents you need, to avoid expending any unnecessary
16 resources.

17 MR. MIRVIS: If it's possible, can he mail to me,
18 because I'm not receiving all the time your e-mails.

19 THE COURT: Mr. Mirvis, you can talk to them
20 afterwards and work that out.

21 MR. MIRVIS: Sorry.

22 THE COURT: So I just want to send a signal to you,
23 Mr. Mirvis, you need to comply promptly, immediately, to avoid
24 having to pay more money.

25 Obviously, it's clear to me that you are trying to

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1 resist this process and hope it goes away, but that's not going
2 to happen; and it will only get more costly. So comply with
3 them, work with the attorneys, deliver to them whatever they
4 ask of you so that we can move this along and avoid another
5 contempt proceeding. Okay?

6 So that resolves this proceeding. I'm not going to
7 impose any coercive fines because right now it's not apparent
8 to me we need them; but, understand again, Mr. Mirvis, what the
9 plaintiffs have asked for is entirely reasonable and consistent
10 with what happens in these situations.

11 If they -- this is looking ahead now -- if they file
12 additional subpoenas and say you need to give us other
13 documents or more documents and you fail comply and we restart
14 this process again, and Judge Kuo agrees with them, and you are
15 back before me, I will not hesitate then to impose what they
16 call coercive sanctions. And that means for every day you
17 don't comply after the first 14, you will have to pay \$100; and
18 that bill will keep going up and up and up. So this is what I
19 mean when I tell you this strategy you have been following so
20 far is not a good one and it's going to cost you a lot of
21 money.

22 I will also give you the warning that if you decide
23 not to comply even then, after I impose the \$100-a-day penalty,
24 you could end up in jail, because then I could say, after 30
25 days of noncompliance, you will be arrested by the marshals and

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1 put in jail until you comply. So this is no passing matter and
2 not frivolous. You need to attend to it promptly, honestly,
3 and with candor.

4 Do you understand that?

5 MR. MIRVIS: Yes.

6 THE COURT: Okay. So I'm here to deliver that message
7 to you. Just give the lawyers what they ask for.

8 If you think a request is unreasonable, you can
9 certainly take that up with Judge Kuo. She is obviously very
10 smart and very good on all of these issues, and she is quite
11 fair and reasonable. So if she believes that that's the
12 situation, she won't hesitate to rule in your favor; but you
13 can't just avoid this and bury your head in the sand. Okay?

14 MR. MIRVIS: Yes.

15 THE COURT: All right. Thank you, everyone. I
16 appreciate your appearances. I will issue a docket order
17 memorializing what happened today.

18 MR. NATBONY: Thank you, Your Honor.

19 (Pause.)

20 THE COURT: So let me go back on the record.

21 My deputy advised me that it may be the case,
22 Mr. Mirvis, that you handed over your original documents to
23 plaintiffs' counsel. If that's the case, I will direct
24 plaintiffs' counsel to make copies and return the originals to
25 Mr. Mirvis.

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1 MR. NATBONY: That's fine, Your Honor.

2 THE COURT: Okay. Thank you, everyone.

3 (End of proceedings.)

4 o o o

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6 Certified to be a true and accurate transcript.

7 /s/ Michele Nardone

MICHELE NARDONE, CSR -- Official Court Reporter

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